versally accepted that the laws of a ceded country remain in force until changed by the new sovereign. The orders of the President, being void, could not have repealed the existing laws, and Congress did not attempt to change those laws until later. Under the rule stated, therefore, it would seem that the tariff law existing at the time of cession continued in full force, making imports from the United States subject to duties as before. Without intimating that the rule stated is incorrect, and without indicating any fact showing a change of the law by the United States, it was, nevertheless, assumed that imports into Porto Rico from this country were entitled to entry free of all duties. Obviously the court could have declined to follow the rule stated; it is even possible that some clause in the Constitution might have been interpreted as changing the laws in question. But in passing by both points without consideration, the opinion rendered not only fails to consider the question decisive of the issue, but also leaves it in a state of the utmost confusion. Either the effect of cession on existing laws was entirely overlooked, or the above rule, that existing laws continue until changed by the new sovereign, — a proposition accepted as a necessary principle in every system of law, — has been overruled without the statement of any reason. In either event the absence of judicial precision has resulted in a decision the effects of which cannot be foretold. The minority, to whom one might naturally look for the correction of such errors, does not assist the settlement of these difficulties by the attempt to prove that Porto Rico is a foreign country.

It is still more to be regretted that the defects in the decision under discussion are by no means exceptional. From our system of allowing judges to express opinions upon general principles and of following judicial precedent, two evils almost inevitably result: our books are overcrowded with *dicta*, while *dictum* is frequently taken for decision. Since the questions involved are both fundamental and political, in constitutional cases more than in any others the temptation to digress, necessarily strong, is seldom resisted; at the same time it is strikingly difficult, in these cases, to distinguish between decision, *ratio decidendi*, and *dictum*. Yet because the questions involved are both extensive and political, and because the evils of a *dictum* or of an ill-considered decision are of corresponding importance, a precise analysis, with a thorough consideration of the questions raised, and of those questions only, is imperative. The continued absence of judicial precision may possibly become a matter of political importance; for opinions such as those rendered cannot be allowed a permanent place in our system of government.

A PROBLEM IN RATIFICATION. — In a recent decision of the House of Lords, overruling a judgment of the Court of Appeal, a neat problem is presented, as to the possibility of a ratification, where the quasi-agent does not profess to act as agent. One Roberts entered into a contract with the plaintiffs, intending to act for the defendants, but without being authorized, and without professing so to act. The Court of Appeal held that under such circumstances a ratification was possible, as a logical result of the established doctrines of undisclosed principal and ordinary ratification. *Durant* v. *Roberts*, [1900] 1 Q. B. 629 (C. A.). See 14 HARVARD LAW REVIEW, 153. It was said that as ratification was equiv-

alent to a prior command, the position of the defendants, on adopting Roberts's act, was that of an undisclosed principal, who could sue or be sued on the contract. The fact that the plaintiffs did not know that the quasi-agent was acting for a third person made no difference, as that was always the case with an undisclosed principal, and that consequently, as far as the plaintiffs were concerned, their position was the same, whether Roberts had received his prior command actually, or fictitiously by ratification. It was further urged that professing to act as agent was only evidence of the vital requisite, namely, an intention to act as agent, and that all that was necessary was that Roberts did in fact act in behalf of the defendants. The difficulty with the first part of the argument rests in an assumption of the point at issue. If the defendants could have ratified Roberts's act, they would have become undisclosed principals, as suggested, but is it possible to ratify an act done in one's behalf, unless it is professed to be done in one's behalf? This question is purely one of ratification, and not of undisclosed principal, and on appeal to the House of Lords the judges were unanimous in answering it in the negative. *Keighley, Maxsted & Co.* v. *Durant*, [1901] A. C. 240. The problem is interesting, as there are no direct decisions on the point, and as the few casual *dicta* suggest opposite views. *Bird* v. *Brown*, 4 Ex. 798; *Watson* v. *Swann*, 11 C. B. n. s. 755. Unfortunately, also, the history of ratification, old as it is, does not throw a clear light on the subject.

In the House of Lords the problem is discussed as a matter of interpreting established definitions of ratification, and is argued on practical grounds. The words "acting in behalf of," for example, are construed as meaning necessarily "professing to act in behalf of." It is said that ratification is itself a fiction, that the doctrine of undisclosed principal is anomalous, and that to combine the two, and allow a stranger to become a party to a contract, merely because of an undisclosed intention existing in the mind of one of those contracting, would be adding anomaly to anomaly, rather than correcting an anomaly. According to one judge, "it would enable one person to make a contract between two others by creating a principal, and saying what his own undisclosed intentions were, and these could not be tested." The court's line of argument, it is to be regretted, is not very clearly stated, the theory of ratification and of undisclosed principal, being constantly confused. It would seem that once given the problem, as one of ratification, no discussion of undisclosed principal is in point. If we have any chance for ratification, there can be no principal disclosed or undisclosed. The difficulty with the problem is that there is nothing in the law to show clearly whether a vital requisite is the intention to act as agent, or the profession of that intention to the third party. As a matter of definition it is purely a question of the interpretation of a few familiar phrases. The problem involves the still more perplexing problem as to the relation of all concerned just before ratification. *Vide* 9 HARVARD LAW REVIEW, 60. Perhaps the best view is that the contract between the third party and the agent is in the nature of an offer to the principal, which the latter may accept or reject by an election operating upon the previous unauthorized acceptance of the agent. According to this view, it would seem that in the principal case there could be no ratification, for surely the plaintiffs could not be said to be making an offer to the defendants, when they believed they were making a simple contract with Roberts. In the theories advanced there is a common attribute, namely, an attitude of

mind on the part of the third party toward some definite or indefinite quasi-principal. Accordingly it would seem that the quasi-agent must disclose the fact that he is acting in behalf of some one else, or, in other words, as the House of Lords decides, that for a valid ratification it is essential that the quasi-agent profess to act as agent.

"BOYCOTTS." — The case of *Allen* v. *Flood*, (1898) A. C. 1, has generally been regarded not only as representing the law in England on the subject of malicious interference with business, but also as laying down principles applicable to the whole law of torts. The correctness of the decision on its own facts can never be denied in England; but the recent case of *Quinn* v. *Leathem* (70 L. J. Rep. 76), also before the House of Lords, seems to diminish greatly its authority.

Leathem, a butcher, employed workmen who did not belong to the local trades union. Representatives of the union demanded that Leathem cease to employ these men. On his refusal, they by various means induced several of his customers, and also several of his workmen, to leave him; and thereby ruined his business. The most damaging measure taken by the union was to induce one of his principal customers, a butcher, named Munce, to cease taking meat from him, by threats that they would call out Munce's union employees. Leathem brought suit against several of the union leaders for wrongful interference with his business, and recovered damages. The verdict was sustained by the courts in Ireland, and finally by the House of Lords.

In *Allen* v. *Flood*, the plaintiffs were workmen who were objectionable to other men employed by the same firm. The defendant, a delegate of the union to which the latter workmen belonged, represented to the employers that unless the obnoxious men were dismissed all the men in his union would stop work. It was not clear whether the defendant merely communicated to the employers a resolution already formed by the members of the union to stop work unless the objectionable men were discharged, or whether he threatened that if the employers did not accede to his demands he would call the workmen out. In deciding *Quinn* v. *Leathem*, the lords take the former view, and treat the case as authority only for the proposition that a person who merely communicates facts, without using any threats, is acting lawfully, whatever his motives. It would seem, nevertheless, that the opinions of the majority in *Allen* v. *Flood* might well have been taken to lay down a doctrine broad enough to prevent recovery in a case like *Quinn* v. *Leathem*, except that they left open the question of the effect of a conspiracy. The Irish courts, in fact, thought it necessary to take advantage of the element of conspiracy to distinguish *Allen* v. *Flood*. The House of Lords, however, treating that case with less respect, decline to rest their decision on the sole ground of conspiracy, and avoid giving any precise definition of its effect. They treat the defendants' acts as illegal because they were intended to injure the plaintiff by ruining his business, and were of such a nature as the law would not under all the circumstances regard as justifiable, when so intended.

The case of *Allen* v. *Flood* may be treated in two ways. It may be regarded as an authority for a general view of the law of torts, that an act not otherwise unlawful cannot be rendered so far wrongful, by the